

Delaware and Conservation Tax Credits

The **Conservation Tax Credit** is a financial incentive for landowners to help protect the state's natural resources. Landowners who donate fee-title lands or permanent Conservation Easements to a government entity or Qualified Organization may apply for a credit against their state income taxes.

Sixteen states currently offer tax incentives for conservation (according to the Land Trust Alliance) with five allowing transferability:

Colorado*, Florida, Georgia*, New Mexico*, South Carolina*, Virginia*, Arkansas,
California, Connecticut, Delaware, Iowa, Maryland, Massachusetts, Mississippi, New York,
and North Carolina

*Denotes transferability

Delaware House Bill 248 created an income tax credit for permanent gifts of land or interest in land to public agencies and qualified private non-profit charitable organizations. Lands that qualify must meet either:

- The criteria for Open Space
- Consists of Natural Habitat for the protection of DE's unique and rare biological and natural resources
- Must protect conservation values as defined by states
- Must be made to an entity qualified to hold such property:

State of Delaware,

501 (c)(3) land conservation organizations

Delaware's Tax Credits:

40% Fair Market Value,
5-year carry forward period,
\$50,000 max credit per individual,
Statewide cap of \$1,000,000/yr.

Maryland's Tax Credits:

100% Fair Market Value,
15 year carry forward period,
\$80,000 max credit,
\$5,000 cap on credit applied to taxes/yr.
Unlimited statewide cap.

Virginia's Tax Credits:

40% Fair Market Value,
5 year carry forward period,
Unlimited credit allotment,

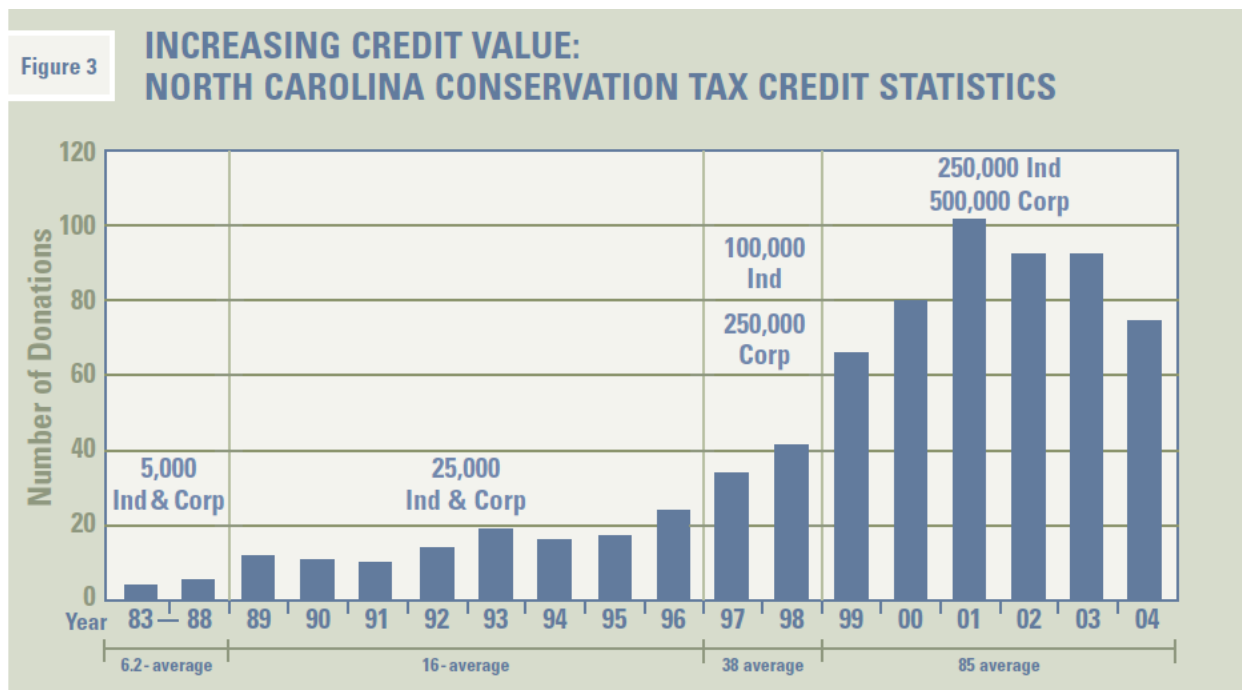
\$100,000 cap on credit applied to taxes/yr.

(Note unlimited amount may be transferred and used by 3rd parties.),
Statewide Cap of \$100,000,000/yr..

Justification for raising cap - Example, NC.

North Carolina first enacted Conservation Credits in 1983, making its program the oldest ongoing state Conservation Credit program. The statistics gathered by the state demonstrate how increasing the value of a conservation tax credit can impact both annual donations and annual acres donated. Over the years, the maximum allowed credit was raised from \$5,000 to \$250,000 for individuals and from \$5,000 to \$500,000 for corporations.

The average number of **conservation easements donated more than doubled** when the credit cap was raised from \$25,000 to \$100,000 per individual and from \$25,000 to \$250,000 per corporation. The average number of donations more than doubled again when the cap was raised to \$250,000 for an individual and \$500,000 for a corporation. While not shown in Figure 3, average annual acres donated also rose significantly from 1983 to 2004, climbing from an average of 397 acres to 11,500 acres.

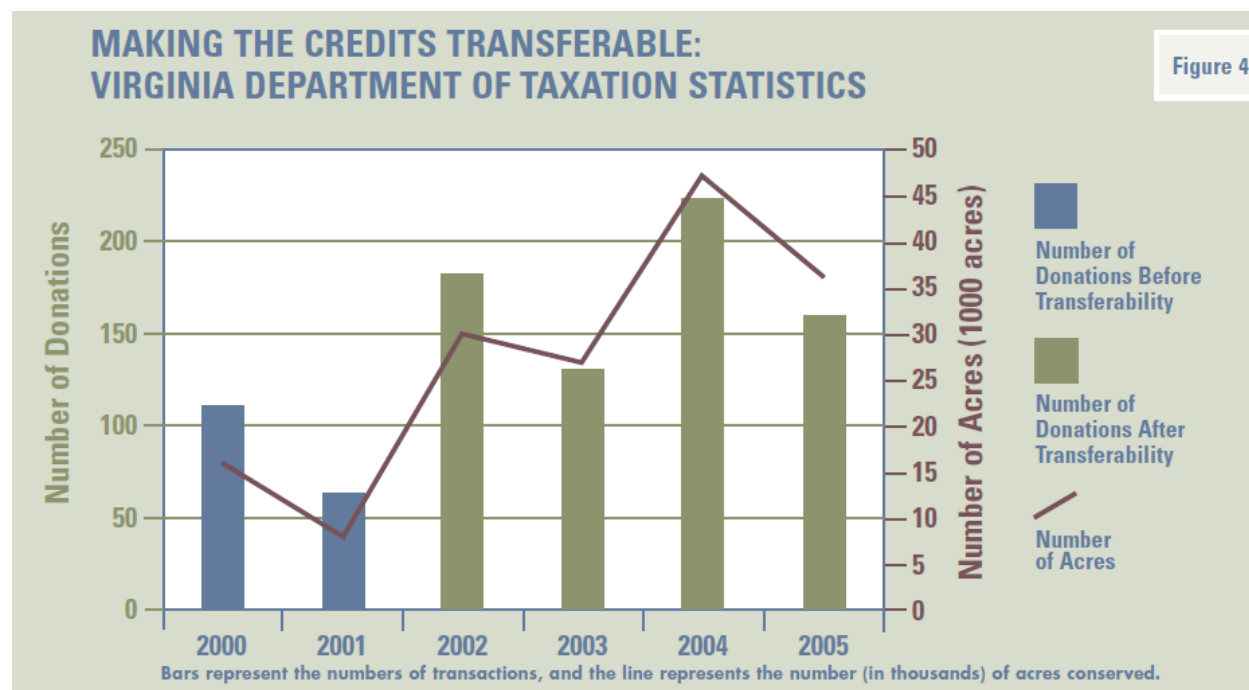


Justification for transferability - Example, VA

For landowners with little income subject to state taxation, a tax credit is a hollow reward for reducing the value of real property by donating a conservation easement. To respond to this, Colorado conservationists made their state tax credit transferable in 2000—that is, the donor/landowner can sell her/his credit to other parties; the buyers then use the purchased tax credit to pay their Colorado income tax. This is appealing to buyers because the credit is sold at a discount

from face value and yet the landowners would still be profiting instead of having a tax credit they couldn't utilize.

The graph below demonstrates the impact of making credits transferable. It compares donation activity in the first two years of Virginia's program, when the credit was not transferable, with activity in the next four years of the program, when credits were transferable. The average number of **donations doubled and the acres protected tripled once credits were made transferable**. Since 2002, the average percentage of credits transferred by landowners to third parties has been 75 percent.



The Virginia transferable credit program is far the largest among the States in dollar value of property conserved. By the end of 2010, \$2,512,000,000 of property value had been donated as easements in Virginia for which tax credit was claimed. The qualifying easements cover over 516,000 acres (2,090 km²) of Virginia landscape. The Virginia program now grants about \$110 million of new tax credit each year. The credit allowance is 40% of the appraised value of the easement donation, so this equates to \$275 million of property value donated per year for protection of wildlife habitat, farmland and woodland, and scenic open space—in perpetuity.

In the states where credit for conservation land donations is transferable, **free markets** have arisen. Brokers assist landowners with excess credit to contact buyers, and the brokers often handle payments and paperwork to protect the principals, and to ensure that transfers are fully reported to the state tax authorities.

Delaware Conservation Tax Credit FAQs:

Since 2001, Delaware has conserved almost 400 acres; 23 projects protecting 366 acres with a tax credit taken of \$759,386 out of a total value of \$4,521,760.

The only push for conservation tax credit incentives was during the 2001-2002 fiscal year with brief education of tax accountants on the conservation tax credit.

Delaware has **has the lowest tax credit cap** out of the 16 states.

The original bill has already been amended by HB 138 of the 145th Assembly in order to eliminate sunset dates.

Department of Natural Resources & Environmental Control, in conjunction with Department of State and Division of Historical & Cultural Resources will certify land. There is a \$2,500 price for initial appraisal.

Options for Delaware:

Tighter qualifications for conservation

Transferability - will require some administrative work and discussions with the Delaware Department of Revenue, as Delaware will need to have a system in place to administer an exchange. Should follow VA's example of a transactional screen - an agreement between DNREC and Department of Revenue (system already in place) with an associated fee to pay for review/screen (\$500-\$1000).

Increased state cap from \$1,000,000 to \$5,000,000 in order to spark the system. By just raising the cap, you're not guaranteed to have enrollment that capitalizes on the whole allotment. There is also the guarantee that you could lower the cap again.

Increased individual allotment from 50,000 to 250,000. (GA = 500,000, CO=375,000, VA=Unlimited). 250,000 per individual is the floor of the exchange program. Again, raising the cap doesn't guarantee that each or any land will qualify for the total amount, just providing the opportunity, allowing for more substantial donations.

Hypothetical Transferability Model (1):

As part of the free market, organizations (or private brokers) work as the middle man between buyers and sellers of conservation tax credits. Among the 5 states that offer transferability, there are dozens of organizations that add conservation tax credits to their list of dealings. Including: Rappahannock County Conservation Alliance (VA), South Carolina Conservation Credit Exchange (SC), Full Circle: Virginia Conservation Tax Credit (VA), Conservation Resource Center (CO), Strugar Conservation Services (CO, VA, NM), and many more.

Conservation Tax Credit Transfer of Colorado offers a pretty good picture of the step by step process of transferring tax credits.

With Conservation Credit Transfer, you'd begin the process by having landowners/sellers register with CTCT by completing the CTCT Seller Registration Form.

TAX CREDIT CERTIFICATE APPLICATION & FEE

CTCT will assist you in completing the application and pay your \$305 application fee as part of our service. We will review and track your tax credit application packet until you are issued a tax credit certificate, which is required before you can sell your tax credit. DRE encourages donors working with a tax credit broker to list the broker as either the main or additional contact on the application form in order to expedite the process.

TAX CREDIT CERTIFICATE

Once you have closed on your easment CTCT will work with you, your land trust or governmental agency and other conservation professionals to obtain all of your donation documents and prepare your tax credit application.

REVIEW OF DONATION DOCUMENTS

CTCT will conduct a thorough due diligence review of all of your donation documents to ensure that your donation meets all state and federal laws, regulations and notices. We will help you make any required changes to your documents, if needed.

TRANSFER PROCESS

Once CTCT has accepted your credit for transfer and your tax credit certificate has been issued, we will match you with a qualified credit buyer. Both sellers and buyers execute CTCT's Agreement to Purchase/Sell. Transfers are completed by delivering signed copies of the Agreement and checks from the buyers to the sellers.

TAX FILING PAPERWORK

After your credits are sold, we prepare the required paperwork documenting the completed transaction for both you and the buyers to file with your Colorado state income tax returns. This includes completing Department of Revenue (DR) Form 1305 and help with completing Forms DR 1303 and 1304.

GOING MARKET RATE

You receive a percentage of the face value of your credit based on "the market transfer rate." The limited supply of tax credits under the new cap program will affect the rate.

AS A BUYER OF TAX CREDITS in Colorado with Conservation Tax Credit Transfer, they begin by completing the CTCT Buyer Registration Form.

TRANSFER PROCESS

CTCT conducts a thorough due diligence review of all seller donation documents to ensure that we provide quality tax credits for our buyers.

Once CTCT has accepted a credit for transfer, we match you with a credit seller. Both buyers and sellers execute CTCT's Agreement to Purchase/Sell. Transfers are completed by delivering signed copies of the Agreement to both parties and checks from you to the sellers.

TAX FILING PAPERWORK

After the credits are sold, we prepare the required paperwork documenting the completed transaction for both sellers and you to file with your Colorado state income tax return. This includes completing Department of Revenue (DR) Form 1305.

GOING MARKET RATE

The supply of tax credits under the cap program affects the credit transfer rate. Credit buyers will receive a discount on the face value of the credit purchased based on the "going market rate." Historically, the credit buyer has purchased credit at a fifteen percent (15%) discount. This rate can change over the course of the "transfer year" based on supply and demand. We transfer credits throughout the "transfer year."

- Georgia Conservation Credit Program: <http://www.taxtransferga.com/>
- State Funding for Conservation Tax Credits (LTA): <http://www.landtrustalliance.org/policy/public-funding/state-funding>
- Tax Credit Exchange Program: <http://www.taxcreditexchange.com/index.html>
- Conservation Resource Center, State Conservation Credit Impact and Analysis: <http://www.taxcreditexchange.com/documents/StateConservationTaxCreditsImpactandAnalysis.pdf>
- State and Local Tax Incentives (LTA): <http://www.landtrustalliance.org/policy/tax-matters/campaigns/state-tax-incentives>
- State By State Tax Credit Comparison: <http://www.landtrustalliance.org/policy/documents/nc-tax-credit-comp.pdf>
- Tax code: <http://delcode.delaware.gov/title30/c018/sc01/index.shtml>
- <http://www.taxtransfer.net/sellingtaxcredits.htm>